Constitutional Law--Administrative Searches

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CASE COMMENTS

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D denied building inspector's entry into premises on three different occasions when the inspector did not produce a search warrant. A criminal charge was brought against *D* for refusal to admit the inspector. *D* instituted action for a writ of prohibition alleging that the inspection ordinance under which he was being prosecuted was unconstitutional. The Superior Court of California denied the writ, the District Court of Appeals affirmed, and the Supreme Court of California denied a petition for hearing. *Held,* reversed. *D* had a constitutional right under the Fourth Amendment to insist on a search warrant; and, therefore, he could not be convicted under the ordinance for refusal to consent to the inspection. *Camara v. San Francisco,* 87 S. Ct. 1727 (1967).

The Supreme Court by a six to three vote has for the first time held that a search warrant is required for an administrative search when the occupant of a private dwelling refuses to admit an inspector without such warrant.[1] In a companion case the Supreme Court applied the same standard to administrative searches of commercial property.[2]

The Fourth Amendment has historically been held to apply to cases involving criminal activity.[3] Now because refusal to permit inspection is a criminal offense under most inspection ordinances,[4] and because the occupant of the home is left subject to the discretion of the official conducting the inspection, the Court in the principal case stated that administrative inspections also con-

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[1] The Fourth Amendment is applied to the states through the Fourteenth Amendment. Ker v. California, 374 U.S. 23 (1963).

[2] See v. Seatle, 87 S. Ct. 1737 (1967).

[3] *See, e.g.,* Jones v. United States, 357 U.S. 493 (1958).

[4] Camara v. San Francisco, 87 S. Ct. 1727, 1730 (1967). The provision under which the defendent was prosecuted is quoted as follows:

> "Any person, the owner or his authorized agent who violates, disobeys, omits, neglicts, or refuses to comply with or who resists or opposes the execution of any of the provisions of this Code, or any order of the Superintendent, the Director of Public Works, or the Director of Public Health made pursuant to this Code, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars ($500.00), or by imprisonment, not exceeding six (6) months or by both such fine and imprisonment, unless otherwise provided in this Code, and shall be deemed guilty of a separate offense for every day such violation, disobedience, omission, neglict or refusal shall continue."

stitute a significant intrusion upon the interests to be protected by the Fourth Amendment without the traditional safeguards it guarantees.[5]

Applying the Fourth Amendment to administrative inspections presents some new problems, the most important of which is the standard of probable cause used in issuing search warrants. A different standard of probable cause should be applied in administrative searches than is applied in criminal cases.[6] The need for inspection must be weighed in terms of reasonable goals of code enforcement.[7] There would be no need of probable cause to believe that a particular dwelling contained matters in violation of the code. Instead probable cause for inspection could be based on the need to inspect a whole area. Code enforcement by area inspections is reasonable because it has judicial and public acceptance, and public interest in eliminating dangerous conditions demands area inspections. Inspections are only a limited invasion of privacy, being neither personal nor necessarily producing evidence of crime.[8] The probable cause test would depend on the nature of the search with a mere passage of time being sufficient probable cause for building inspections.[9] Reasonableness is the ultimate standard. In Justice White's words, "If a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search warrant."[10] In any event warrants would be sought only after entry is refused unless a prior complaint has been made.[11]

Justice Clark, dissenting, declared that none of the problems raised by the majority actually existed. He felt that the majority ruling would make health inspections impossible in many places. Reliance could no longer be placed on voluntary compliance of home owners in permitting inspections and warrants issued would be needless paper work.[12]

This case was not the first time the Supreme Court has had a chance to consider the constitutionality of warrantless administrative

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[5] *Id.* at 1733.
[6] *Id.*
[7] *Id.* at 1734.
[8] *Id.* at 1735.
[9] *Id.*
[10] *Id.* at 1736.
[11] *Id.*
[12] *Id.* at 1741 (dissenting opinion).

inspections. An opportunity to decide the issue was avoided eighteen years earlier. A conviction for the refusal to admit a health inspector without a warrant was reversed by the Municipal Court of Appeals for the District of Columbia.[13] The case was appealed to the Court of Appeals.[14] In affirming the Municipal Court of Appeals decision, Judge Prettyman wrote a strong opinion holding Fourth Amendment guarantees applicable to administrative inspections. He asserted that the basis of the prohibition against searches was man's common law right to the privacy of his home and not protection against self-incrimination.[15] Judge Prettyman declared, "To say that a man suspected of a crime has a right to protection against search of his home without a warrant, but that a man not suspected of crime has no such protection, is a fantastic absurdity."[16] Regardless of his motivation or authority, a governmental official in order to invade a private home must either face an emergency that requires immediate action or be authorized to do so by a magistrate.[17] There is no distinction between a "search" and an "inspection".[18] Judge Prettyman believed that since health laws are enforced by the police power, they should be subject to the same constitutional limitations to which the other police powers are subject.[19] The dissenting judge in that case argued that the use of warrants would lead to judicial supervision of health laws; and that there was no type of warrant that authorized mere inspection rights.[20] On appeal to the Supreme Court the decision was affirmed but on different grounds thus avoiding the constitutional issue of warrantless administrative inspections.[21]

The Supreme Court next had opportunity to decide the question ten years later. In 1959, in *Frank v. Maryland*,[22] by a narrow five to four vote the Court rendered the decision that was to be overruled in *Camara*. The Court upheld an arrest for refusal to permit an administrative inspection without a warrant. Justice Frankfurter, delivering the majority opinion, stressed the balancing of social interests which is basic to the decision in these cases. The right

[13] Little v. District of Columbia, 62 A.2d 874 (D.C. Mun. App. 1948).
[14] District of Columbia v. Little, 178 F.2d 13 (D.C. Cir. 1949).
[15] *Id.* at 16.
[16] *Id.* at 17.
[17] *Id.*
[18] *Id.* at 18.
[19] *Id.* at 20.
[20] *Id.* at 24 (dissenting opinion).
[21] District of Columbia v. Little, 339 U.S. 1 (1950).
[22] 359 U.S. 360 (1959).

of the individual to be free from invasion of the privacy of his home must be balanced against the welfare of society to be protected from the dangers of disease, fire, and unsafe construction. Justice Frankfurter emphasized that the occupants had only a peripheral interest to be protected in administrative inspections and that the inspections placed little demand on the occupants. Also no evidence for criminal prosecution was sought.[23] A long history of acceptance and use favors administrative inspections. Justice Frankfurter felt that the need for these inspections and the difficulty in making them was very great and this consideration outweighed the individual's interest in privacy.[24] Moreover, the requirement of a warrant for inspection would lead to the issuance of "synthetic search warrants" which would serve no useful purpose and would give the home owner no added protection.[25]

Justice Douglas in his dissenting opinion in *Frank* used many of the arguments later relied on by the majority in *Camara.* In contrast to Justice Frankfurter, Justice Douglas argued that historically the Fourth Amendment was designed to protect the sanctity of the home and was not concerned with criminal behavior. Besides, administrative inspections could lead to eventual criminal prosecution for code violations.[26] The holding in the *Frank* case was later reasserted with a four to four decision in a similar case.[27]

Extensive research discloses no West Virginia case on the issue of warrantless administrative searches although the West Virginia Constitution contains a section patterned after the Fourth Amendment.[28] The West Virginia Code authorizes cities to conduct inspections of private premises as long as not in violation of article III section 6 of the West Virginia Constitution.[29] One West Virginia case indicates that this constitutional provision was modeled after the federal amendment and should, therefore, "receive harmonious construction when applied to the actions of state of-

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[23] *Id.* at 367.
[24] *Id.* at 372.
[25] *Id.* at 373.
[26] *Id.* at 378-379.
[27] Ohio ex *rel.* Eaton v. Price, 364 U.S. 263 (1960).
[28] W. Va. Const. art. III, § 6, provides:
"The rights of the citizens to be secure in their houses, persons, papers and effects, against unreasonable searches and seizures, shall not be violated. No warrant shall issue except upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, or the person or thing to be seized."
[29] W. VA. CODE ch. 8A, art. 4, § 13 (Michie 1966).

ficers."[30] It appears then that the West Virginia court would be in harmony with the *Camara* holding in interpreting the state constitution when appeal is made to the state constitutional right.

The *Camara* decision fits the pattern of recent Supreme Court cases which have expanded individual rights. The effect of the warrant requirement on administrative inspections is yet to be observed. That it would lead to wholesale refusals to admit inspectors without warrants into homes is doubtful. Such refusals have been few in the past and are not likely to increase as the inspections are beneficial to the occupant and are generally accepted as useful. The issuance of warrants under a different set of rules for probable cause should not weaken the probable cause requirement as applied in criminal cases. Competent magistrates should have no difficulty distinguishing between the administrative and criminal cases and applying the proper probable cause test. *Camara* has underscored and strengthened the citizen's right to be free from unreasonable or arbitrary searches.

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Constitutional Law—Due Process in Juvenile Court Proceeding

Petitioner, a 15-year old boy, was committed to a state industrial school after he allegedly made a lewd telephone call to a female neighbor. He was adjudicated delinquent in an unusually informal juvenile court proceeding, with no sworn testimony, the complainant not being present, and without notification to either the petitioner or his parents of the right to be represented by counsel. Gerald Gault was committed to the industrial school for the period of his minority, unless sooner released, under code provisions of the state of Arizona.[1] The boy's parents petitioned for a writ of habeas corpus in the county superior court, alleging that the procedure used in the juvenile proceeding violated the petitioner's constitutional rights. The county court dismissed the petition and

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[30] State v. Andrews, 91 W. Va. 720, 727, 114 S.E. 257, 260 (1922).

[1] ARIZ. REV. STATS. § 8-201-6 (1956). In contrast, an adult, convicted in the criminal court for the same offense, would have been subject to a fine of $5.00 to $50.00 or imprisonment in jail for not more than two months. ARIZ. REV. STATS. § 13-377 (1956).